



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 4, 2003

Mr. Anthony S. Corbett
Freeman & Corbett
2304 Hancock, Suite 6
Austin, Texas 78756

OR2003-1387

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177376.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received two requests from the same requestor for "all documents relating to Agenda Item V (Meter Reading and Billing Matters) on the Board of Directors agenda for their meeting of 5 December 2002" and for "all the documents contained in the Board of Directors Packet for Agenda Item V. (Meter Reading and Billing Matters) for the Board of Directors [m]eeting of 19 December 2002." You state that you will release some of the information to the requestor. However, you claim that some of the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your statement that much of the information responsive to this request has previously been submitted to this office in connection with other requests for rulings. Our records show that the rulings to which you refer are Open Records Letter Nos. 2003-1021 (2003) and 2003-0449 (2003). In Open Records Letter No. 2003-0449, we concluded that some of the submitted information was excepted from disclosure under sections 552.107, 552.111, and 552.137 of the Government Code. We found that the remainder of the submitted information had to be released. Similarly, in Open Records Letter No. 2003-1021, we concluded that some of the submitted information was excepted from disclosure under sections 552.107, 552.111, and 552.137. We found the remainder had to be released. To the extent that the law, facts, or circumstances on which those rulings were based remain unchanged, you may rely on our previous rulings with respect to the information that was the subject of the previous rulings. *See* Gov't Code § 552.301(a); Open Records Decision 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Govt' Code § 552.301(a) where (1) precisely the same records or information previously

were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

You claim that all three of the submitted documents are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

With regard to the "AWR letter" and the "AWR e-mail," we conclude that these documents do not contain advice, recommendations, opinions, or other material reflecting the policymaking processes of the district. This information is not excepted from disclosure under section 552.111. With regard to the "Draft Agreement," we agree that it may be withheld in its entirety because it necessarily reflects the advice, recommendations, or opinions of the drafter as to the form and content of the final document and it relates to the policymaking process of the district.¹ As we are able to make this determination, we need not address your argument under section 552.107.

Finally, we note that the submitted documents contain e-mail addresses of members of the public, which are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 requires the district to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. You do not

¹ We note that you state that the final contract will be made available to the public.

inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The district must, therefore, withhold e-mail addresses we have marked under section 552.137 of the Government Code.

In summary, the district may rely on Open Records Letter Nos. 2003-1021 (2003) and 2003-0449 (2003) with respect to the information that was the subject of the previous rulings to the extent the law, facts, or circumstances on which those rulings were based remain unchanged. The district may withhold the Draft Agreement in its entirety under section 552.111. The district must withhold the e-mail addresses that we have marked under section 552.137. The district must release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

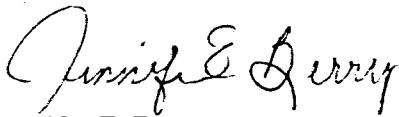
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer E. Berry".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 177376

Enc: Submitted documents

c: Mr. John C. McLemore
8400 Cornerwood Drive
Austin, Texas 78717
(w/o enclosures)